

## Message Text

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PAGE 01 STATE 275076

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FM SECSTATE WASHDC

TO AMEMBASSY BRASILIA IMMEDIATE

INFO AMCONSUL SAO PAULO PRIORITY

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E.O. 11652: N/A

TAGS: AFSP, BR

SUBJ: LABOR SUIT BY ISABEL BAKER RIBEIRO

REF: BRASILIA 9326

JOINT STATE/JUSTICE MESSAGE

1. EMBASSY INSTRUCTED TO RETAIN THE SERVICES OF THE LAW FIRM OF SARDENBERG, BULCAO, CHAZAN, AND BEKIN, WHOSE PRINCIPAL OFFICE IS AT RUA MEXICO 3-15, RIO DE JANEIRO (TELEPHONE 221-4014) WITH SAO PAULO OFFICES LOCATED AT RUA QUIRINO DE ANDRADE, 219 NINTH FLOOR, SAO PAULO. EMBASSY INSTRUCTED TO CONTACT EITHER MR. SERGIO F. SARDENBERG OR MR. PAULO F. BEKIN IN LATTER SAO PAULO OFFICE. MESSRS. SARDENBERG AND BEKIN RECENTLY CALLED AT DEPT OF JUSTICE IN WASHINGTON AND EXPRESSED THEIR WILLINGNESS TO REPRESENT THE USG BEFORE LOCAL COURTS IN SAO PAULO. BOTH ATTORNEYS HIGHLY COMPETENT AND FLUENT IN ENGLISH.

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PAGE 02 STATE 275076

2. EMBASSY SHOULD INSTRUCT ATTORNEYS TO APPEAR IN COURT

AND CHALLENGE THE COMPETENCE OF THE LABOR COURT ON THE BASIS THAT UNDER BRAZILIAN LAW, REPEAT BRAZILIAN LAW, LABOR COURT IS NOT COMPETENT TO HEAR A CASE IN WHICH A FOREIGN STATE IS NAMED A RESPONDENT. EMBASSY IS AWARE OF

DISTINCTION BETWEEN LACK OF COMPETENCE OF COURT BASED ON SOVEREIGN IMMUNITY AND LACK OF COMPETENCE BASED ON MANDATE OF LOCAL LAW. ONLY THE LATTER SHOULD BE USED AS A BASIS FOR CHALLENGE OF COURT'S JURISDICTION.

3. SUBSIDIARILY, AND WITHOUT SUBMITTING MERITS OF THE CASE TO THE COURT'S JURISDICTION, ATTORNEYS SHOULD POINT OUT THAT IN ANY EVENT, PLAINTIFF HAS VOLUNTARILY RESIGNED HER POSITION, AND NO COMPENSATION IS DUE TO HER FOR IMPROPER DISCHARGE. THIS REPRESENTATION SHOULD BE MADE TO THE COURT SOLELY FOR THE PURPOSE OF ESTABLISHING THAT THE USG IS NOT CHALLENGING THE COURT'S JURISDICTION BECAUSE IT HAS NO DEFENSES AS TO MERITS OF THE CLAIM. EXPERIENCE TEACHES THAT COURTS WILL ENTERTAIN CHALLENGE TO THEIR JURISDICTION WITH GREATER FACILITY IF THEY ARE APPRISED OF THE LACK OF MERIT OF PLAINTIFF'S CLAIM.

4. EMBASSY AUTHORIZED TO ISSUE TO COUNSEL FROM SAID LAW FIRM AN APPROPRIATE POWER OF ATTORNEY. EMBASSY IS INSTRUCTED TO REACH WITH COUNSEL A DEFINITIVE FEE ARRANGEMENT BEFORE COUNSEL PROCEEDS IN THE CASE. IN JUSTICE'S VIEW FEE SHOULD NOT EXCEED \$750.

5. EMBASSY SHOULD SOLICIT VIEWS OF COUNSEL AS TO MERITS OF PLAINTIFF'S CLAIM WITH PARTICULAR ATTENTION TO DISLOCATION BONUS ISSUE RAISED ON PAGE 2 OF SECOND PART OF REFTEL. IF EMBASSY RECEIVES WRITTEN VIEW, SUBMIT COPY TO DEPT.

6. IN FUTURE SUCH CASES, DEPT WOULD APPRECIATE EMBASSY NOTIFYING DEPT OF RECEIPT OF SERVICE OF PROCESS AS SOON AS SAME IS RECEIVED. PLEASE GIVE NAME OF CASE AS IT APPEARS ON SUMMONS, AND FORWARD COPY OF COMPLAINT ASAP TO DEPT. IF UNOFFICIAL TRANSLATION CANNOT BE OBTAINED IMMEDIATELY, SEND PORTUGUESE COPY. WITH NOTICE OF LAW LIMITED OFFICIAL USE

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PAGE 03 STATE 275076

SUIT, PRECISE NAME OF DEFENDANTS, AND COPY OF COMPLAINT, DEPT WILL BE ABLE TO PROVIDE BETTER ADVICE WITHOUT PROBLEMS ENGENDERED BY IMMEDIATE CABLES.

7. JUSTICE REQUESTS STATUS REPORT ON JOSE AUGUSTO COSTA CASE. INGERSOLL

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## Message Attributes

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